United Nations S/AC.44/SR.29

Security Council

Provisional

Distr.: General
29 October 2009

Original: English

Security Council Committee established pursuant to resolution 1540 (2004)

Provisional summary record of the 29th meeting
Held at Headquarters, New York, on Friday, 2 October 2009, at 10 a.m.

Chairman: Mr. Shepherd (Vice-Chairman) ..... (United Kingdom)

Contents

Thematic discussion

Specific element:

(e) Evaluate, as appropriate, the impact of national implementation measures on individuals and due process standards

(c) Conduct regional analysis of implementation, with some examples of national and regional practices and experience sharing

Corrections to this record should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

09-55200 (E)

Please recycle

In the absence of Mr. Urbina (Costa Rica), Mr. Shepherd (United Kingdom), took the Chair.

The meeting was called to order at 10.20 a.m.

Thematic discussion

Specific element (e): Evaluate, as appropriate, the impact of national measures on individuals and due process standards

1. **Mr. Andemicael** (Expert), introducing the agenda item, said that as Security Council resolution 1540 (2004) did not specify intent as an element of illicit trafficking, the liability of the actor was thus a common liability based on ascertainment of the material commission of an act prohibited by law. The relevant questions were whether the possession of illicit material related to weapons of mass destruction should also be a crime and whether the fact that the danger such material represented if used for terrorist purposes was such as to justify changes to normal criminal proceedings. No State had yet reported granting law enforcement agents special or extraordinary search, arrest or detention powers; limitation of the right of legal representation and the right to be assisted by an interpreter; or denial of the right to appeal or benefit from other due process standards in the case of violations relating to requirements under the resolution.

2. The background paper provided some relevant legal information to help with the analysis of how States' implementation of the provisions of Security Council resolution 1540 (2004) would make the standards of human rights, refugee and humanitarian law applicable. The Committee might wish to invite States to provide information on their handling of those issues in relation to the implementation of the resolution and to encourage States to verify whether their legal proceedings were aligned with due process standards and respect for fundamental human rights and freedoms.

3. **Mr. Mashkov** (Russian Federation) said that the Committee should not add to the work of the experts, who were already discussing issues that were only marginally related to implementation of resolution 1540 (2004).

4. **Mr. Marschik** (Austria) said that his delegation had proposed the topic, which was not new, as similar issues had been dealt with by the committees established pursuant to Security Council resolutions 1267 (1999) and 1373 (2001). It had become clear that States would benefit from some guidance in the area of due process, which was very important for a number of reasons. Member States were required under paragraph 2 of Security Council resolution 1540 (2004) to adopt and enforce appropriate effective laws, in accordance with their national procedures. In line with the obligations of States under international human rights instruments, those procedures should include due process guarantees, such as independence and impartiality of the judiciary, the presumption of innocence, the right of defence and the right to a fair trial, including the right to appeal. The same standards should apply to the measures referred to in paragraph 3 of the resolution, which should be based on clear legislation to avoid interference with fundamental human rights and the rule of law.

5. There were also political reasons to ensure compliance with due process and rule of law obligations. Security Council resolutions, the 2005 World Summit Outcome, and the Plan of Action of the Global Counter-Terrorism Strategy all clearly stated that States should comply with international law, including applicable international human rights, refugee and humanitarian law, when combating terrorism.

6. Goodwill and cooperation from national entities were more easily achieved if specific legal protections were provided. Counter-terrorism measures and human rights protection measures should be complementary and not conflicting. Accordingly, Member States should enhance information-sharing on their legal and regulatory architecture. The information provided could be used for a compilation of best practices.

7. **Mr. Cui** Wei (China) said that China supported the views expressed by the delegation of the Russian Federation. He noted the comments made by the delegation of Austria, but believed that the implementation of Security Council resolution 1540 (2004) should not be compared in too simplistic a way with the implementation of earlier resolutions. Implementation of the later resolution was still at the stage of inviting countries to submit reports and to enhance capacity-building. The Committee should therefore take a step-by-step approach rather than introducing new concepts which would only bring additional new complexities and burdens for Member

States and further delay implementation of the resolution.

8. **Mr. Vargas** (Brazil) agreed that respect for due process was vital in the implementation of all Security Council resolutions. However, the Committee should be cautious about asking Member States to report additional information when not all of them had been able to comply with the initial requirements. If further requirements were imposed, States would need additional assistance.

9. **Mr. Wuchte** (United States of America) said that his delegation had supported the language used in resolution 1810 (2008) about the three committees working together, and it was important to seek views concerning the efforts made to rationalize their work. However, it was also important to maintain the independence and uniqueness of non-proliferation treaties and regimes, including the work of the present Committee.

10. **Mr. Cuculi** (Observer for Italy) said that he shared the views of Austria and other delegations regarding the need for caution on the very complex issue of due process. Respect for the rule of law and the rights of all individuals depended on the clarity of national laws. Crimes and penalties relating to the violation of non-proliferation provisions should be clearly specified, as any loopholes in national legislation made implementation of the resolution more difficult.

11. **Mr. Chatel** (France) said that implementation of Security Council resolution 1540 (2004) was clearly a national responsibility. It was also clear that the Committee's work was different from that of the sanctions committees. Yet it was important and legitimate for the Committee to make it clear that obligations to fight proliferation could not be used to justify restrictions of freedom.

12. **Mr. Mashkov** (Russian Federation) asked how much working time the experts had spent on preparing the paper on the current topic. Implementing Security Council resolution 1540 (2004) was a State responsibility. It was time consuming and counter-productive to add to the Committee's agenda issues that were political in nature and depended on how the individual State operated. Such activity prevented the Committee from dealing with practical issues relating to actual implementation.

13. Human rights did not form part of the Committee's mandate and bringing in that issue would only lead to further dissatisfaction with the resolution. His delegation did not oppose discussion of human rights, but considered that they should be dealt with elsewhere.

14. He agreed with the representative of the United States that Security Council resolution 1540 (2004) was a non-proliferation resolution rather than a sanctions resolution. The resolution did call for cooperation with the counter-terrorism committees, but that did not justify adding additional elements to the work of the present Committee. The experts should focus on the specific issues that were within the Committee's mandate.

15. **Mr. Wieland** (Austria) said that although the focus of the Committee differed from that of the sanctions committees, the three committees had one point in common: they all targeted and had a direct impact on individuals. Concerns about human rights therefore arose, and it was better to address those concerns from the beginning rather than waiting for problems to arise, as had occurred with the other committees.

16. **Mr. Andemicael** (Expert) said that the experts had worked on all eight papers in accordance with the instructions received and had also worked on the modalities paper (S/2009/170). They had not spent more time on any particular paper at the expense of others.

Specific element (c): Conduct regional analysis of implementation, with some examples of national and regional practices and experience sharing

17. **Mr. Andemicael** (Expert), introducing the agenda item, said that background paper (c) explored the feasibility of the regional approach to analysis of implementation and listed a number of ideas for addressing the challenges involved.

18. In the statistical analysis, rough estimates had been made based on what Member States had reported and the content of the national matrices. The fact that States were not reporting, or were underreporting, did not necessarily indicate a lack of implementation as the Committee might not have received full information. Nevertheless, reporting was the first step in implementation.

19. Low implementation was closely related to a lack of capacity-building. The active engagement of some regional and subregional organizations, for example in the Latin American and Caribbean region, had been helpful in setting supportive normative guidelines and initiatives.

20. In areas with higher implementation rates, the question of common standards and experience sharing was very important. In the case of Eastern European countries and members of the group of Western European and other States, interregional organizations such as the Commonwealth of Independent States, the European Union and the Organization for Security and Cooperation in Europe would be consulted.

21. Regional security norms could be useful for building synergy among subregional bodies and for bilateral and other initiatives addressing non-proliferation and counter-terrorism requirements and other security issues. They might also help with setting priorities at the national level.

22. Draft model laws or legislative guidelines for the implementation of Security Council resolution 1540 (2004) might be feasible in some regions or subregions. Country-specific workshops with the participation of neighbouring States could also prove useful.

23. **Mr. Bonsen** (Bosnia and Herzegovina) said that chemical, biological, radiological and nuclear terrorism remained an acute threat. The effects of a biological attack might become apparent only several days after the event, and could last for years. The psycho-social effects were unpredictable and potentially disproportionate.

24. In cooperation with IB Consultancy and the Organization for the Prohibition of Chemical Weapons (OPCW), Bosnia and Herzegovina had launched the Implementation Programme against Chemical, Biological, Radiological and Nuclear Terrorism for the Western Balkans (IPACT Programme) and established a national steering committee. The Programme was aimed at developing the necessary laws and regulations with regard to non-proliferation; formulating a programme to implement those laws at all levels; establishing a comprehensive crisis management system; and engaging with critical and sensitive civilian targets and organizations. A wide range of stakeholders would be involved. The Programme would adopt a holistic, functional and transparent approach, coordinating with related projects and building on regional knowledge. Bosnia and Herzegovina would act as the pilot country.

25. The first phase, which had begun recently, consisted of developing a programme plan through stakeholder workshops and a donor conference. It was expected that the Programme would span four years at a total cost of some €6 million. Full implementation would begin in 2010. Norway had contributed €60,000, and Bosnia and Herzegovina €20,000. However, the Programme could not proceed without further material and financial support.

26. **Ms. Chaimongkol** (Observer for Thailand) said that after the adoption of the resolution, her Government had enacted a series of laws to control sensitive items. Using the European Union list as a guideline, Thailand was establishing a national list to include dual-use items in its export control system. Industry outreach programmes were in place in order to keep private-sector actors informed of the process. Thailand's efforts would be improved through training on the identification of sensitive materials and dual-use items, as well as oversight mechanisms to ensure industry compliance.

27. In April 2009, Thailand and the Nuclear Suppliers Group had jointly organized a regional workshop attended by several members of the Association of South Eastern Nations. Cooperation between Member States should be strengthened at the regional and global levels. Regional and international information-sharing mechanisms between exporting and recipient countries should also be developed.

28. The differences between Member States in terms of legislation and enforcement continued to pose a challenge. That gap could be bridged through capacity-building and technical assistance. The Committee should consolidate its role as a clearing house, facilitating capacity-building programmes and coordinating between Member States.

29. **Mr. Tow** (Observer for Singapore) said that involvement in the work of the Committee helped States to gain a better understanding of the implementation of resolution 1540 (2004), and the open meeting was a valuable way of enhancing transparency in the United Nations. Singapore had made good progress in implementing the resolution, despite the challenges it faced as the world's busiest port. He therefore wondered whether the experts could

consider States not only by region, but also according to the type of challenges they faced.

30. Although the focus on due process was valuable, the priority for Singapore was a pragmatic approach to supply-chain security and export controls. His country had initially monitored a partial list of items from the four major multilateral export control regimes. In 2009, it had started to monitor all four lists. Singapore's robust legislation included a catch-all provision for potential weapons of mass destruction items. Strong broker controls had been put in place, in addition to controls on the electronic transmission of sensitive goods technology. Policymakers, enforcement officials and technical experts worked in close cooperation.

31. However, it was important to balance the requirements of the resolution with the country's commercial needs. Singapore's core emphasis was therefore on systematic industry outreach, notably through company visits, seminars and awareness-raising. Companies submitted information through the electronic system TradeNet. The authorities also conducted post-shipment follow-up checks.

32. **Mr. van der Velden** (Observer for the Netherlands) said that a workshop held in 2009 at The Hague had discussed the wide variation in the implementation of the resolution. That problem should be addressed through cooperation between countries and regional and subregional organizations, including the exchange of best practices. With that end in mind, his country would support the establishment of a voluntary trust fund under the auspices of the Committee or of the Office of Disarmament Affairs.

33. **Mr. Koné** (Burkina Faso) said that Africa's record in implementing the resolution did indeed require improvement. That was in part because the large number of States in the African region gave it particular visibility. Most important, however, the continent's comparatively low rate of response reflected the multiple priorities of States rather than any lack of goodwill.

34. In order to address that issue, cooperation between States and experts should be intensified, in particular through country visits. Visited States could be grouped according to their characteristics in order to determine and prioritize their needs. States within a given subregion could also support one another. Burkina Faso was able to assist neighbouring States through its National Financial Administration School and its regional training centre for customs officials, which was recognized by the World Customs Organization; its police officers were also providing assistance in the subregion. Smaller States could take initiatives in the hope that others would follow suit. Lastly, there should be greater dialogue in order to match assistance to States' needs, perhaps through a meeting to be held at United Nations Headquarters.

35. **Mr. Tarar** (Observer for Pakistan) said that although the matrix was a useful tool, a single model might not be relevant to all States. Differences in national systems and capacities should be taken into account. The Committee should avoid an overly rigid approach to national legislative frameworks. In many cases, national legislation might in fact be adequate despite even if it did not use the precise terminology of Security Council resolution 1540 (2004). The temptation to introduce model legislation should also be avoided, as such models often could not be enforced in practice.

36. Cooperation between the experts and national focal points should be intensified. The review should seek ways to facilitate cooperation between States and addressing unresolved issues. In order to ensure objectivity and avoid controversy, the process should be based only on national reports and the contributions of the relevant intergovernmental organizations. Risk and threat assessments should be aimed at identifying, on the basis of national reports, those aspects of the resolution that required further attention.

37. **Mr. Ben-Shaban** (Libyan Arab Jamahiriya) said that lack of capacity in some States had caused disparities in the implementation of the resolution. The regional groups and workshops were intended to address that problem. Such initiatives were valuable, but not sufficient. The Committee could do more to help, for instance by fostering dialogue with individual States. In particular, country visits could be organized with the agreement of the visited State.

38. Access to resources was also an obstacle for many States, which did not have the equipment necessary to monitor exports. International funding should be secured in order to put in place an effective global monitoring regime.

39. **Mr. Nakahara** (Japan) said that his country had worked to promote implementation of the resolution by hosting regional meetings. Although many efforts had been made at the regional level, more could be done to

share experience and to exchange information about such meetings.

40. **Mr. Al-Nasser** (Observer for Qatar) said his country strongly supported the work of the Committee and had been among the first States to submit a report. The Committee must adopt an objective and non-selective approach to its work, focusing on its mandate under the relevant resolutions and avoiding political and specific regional issues. Disarmament and the application of such instruments as the Treaty on the Non-Proliferation of Nuclear Weapons remained the best way to prevent non-State actors from acquiring weapons of mass destruction. Nor should the relevant resolutions be used as a pretext to prevent the development of advanced technologies for peaceful purposes.

41. The success of the Treaty depended in turn on the implementation of the resolution on the Middle East adopted by the 1995 Review and Extension Conference of the Parties to the Treaty. Practical steps should be taken to establish a nuclear-weapon-free zone in the Middle East. Israel should accede to the Treaty and place its facilities under the comprehensive safeguards agreement of the International Atomic Energy Agency.

42. Regional organizations had a pivotal role to play in implementing Security Council resolution 1540 (2004). Regional expertise and cooperation, particularly on such issues as intelligence and border control, were vital in order to conduct risk assessments and determine remedial action. Qatar had therefore hosted a regional workshop on the implementation of the resolution in March 2009. The workshop had highlighted the coordinating role of the League of Arab States and of the Gulf Cooperation Council. Such workshops had been held throughout the developing world, and should also be organized in developed States.

43. **Mr. Mashkov** (Russian Federation) welcomed the regional approach and suggested that the Committee should focus on the countries most in need of assistance. The low level of reporting might be addressed by preparing individual country- or region-specific matrices. The representative of the United States had expressed support on the previous day for expanding the expert group and holding implementation workshops primarily in regions where there were low reporting levels. Such action would help the Committee to focus on the effectiveness of implementation.

44. Seeking reports or other information from regional organizations should be a secondary consideration. The essence of the Committee's work was to analyse national reporting. Regional organizations were welcome to report on regional issues, but it was not mandatory to do so.

45. **Mr. Chatel** (France) said that the disparity in the submission of reports reflected the different situations, priorities and awareness of the concerned States. Some speakers had raised the possibility of a risk-based approach. However, the Committee was a non-discriminatory body. Moreover, traffickers constantly moved their operations to the States with the weakest infrastructure. The Committee should maintain a high level of awareness-raising. He therefore regretted the absence of such bodies as the International Organization of la Francophonie, which had an important role to play.

46. Regional seminars were not sufficient to help with the process of drafting or amending legislation. It was vital to discuss how to organize and fund country visits. The adoption of model laws would also be useful. France had devoted significant time and resources to reformulating national non-proliferation legislation; the resulting texts would be disseminated, and might benefit other countries that used the French language or a civil-law system.

47. **Mr. Wuchte** (United States of America) noted that the European Union's two Joint Actions had largely funded two rounds of successful workshops. The first round had focused on awareness-raising and the second, almost complete, on implementation of the resolution. The Committee should now focus its efforts on countries or smaller groups when so requested. His Government supported the idea of a voluntary fund to help States with implementation.

48. The Committee's programme of work had presented many ideas and four working groups had been established. Regional and intergovernmental organizations could be encouraged to organize workshops in specific areas when they had the capacity to do so.

49. **The Chairman**, speaking as representative of the United Kingdom, said that his Government believed that Security Council resolution 1810 (2008) and the

Committee's programme of work gave a very clear mandate for intensifying work at the regional level. As the Committee moved firmly into the implementation and capacity-building stage, more targeted country-specific and regional events and visits would be appropriate. The Committee should address the needs expressed by States, respecting their sovereignty at all times.

The meeting rose at 12.20 p.m.